[fol. 7] IN THE COURT OF QUARTER SESSIONS OF ERIE COUNTY

[Title omitted]

SENTENCE:

Indictment 1st Ct.—Breaking and Entering a Store Building with Intent to Commit a Felony Therein.
2nd Ct.—Larceny.
3rd Ct.—Receiving Stolen Goods.
April 26, 1929. Defendant pleads Guilty.

And now, April 26th, 1929, the Court sentence the Defendant, Elmer Sullivan, to pay a fine of One Hundred ($100) Dollars to the Commonwealth (for the use of Erie County) pay the costs of prosecution, to restore the property taken, if not already done, or pay the value thereof to the owner thereof and undergo an imprisonment in the Western Penitentiary, of Pennsylvania (situate in the county of Allegheny,) by separate or solitary confinement at labor for an indefinite term, the minimum of which shall be Three (3) Years and the maximum Six (6) Years to be computed from this date, there to be kept, fed, clothed and treated as the law directs, and stand committed until the sentence be complied with.

Per Curiam, H.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 8] IN THE COURT OF QUARTER SESSIONS OF THE PEACE OF CENTRE COUNTY, PENNSYLVANIA, FEB. SESSIONS 1932

No. 100

COMMONWEALTH

vs.

ELMER SULLIVAN

INFORMATION—Filed December 31, 1931

Commonwealth of Pennsylvania vs. Elmer Sullivan. Reg. No. B-1417. T. N. Elmer John Sullivan

STATE OF PENNSYLVANIA,
County of Centre:

Before me, the subscriber, a Justice of the Peace in and for said State and County, personally came W. J. McFar-

land, Deputy Warden, who being sworn according to law, says that Elmer Sullivan, Reg. No. B-1417, a prisoner confined in the Western State Penitentiary, in the Township of Benner, County of Centre, and State of Pennsylvania, sentenced by the Court of Quarter Sessions of the Peace for Erie County on the 26th day of April, A. D. 1929, to a term of Imprisonment of not less than 3 years nor more than 6 years, and whose term of imprisonment had not yet expired, did, on the 28th day of December, A. D. 1931, in the Township of Benner, County of Centre and State of Pennsylvania, break prison and break prison and escape from the said Western State Penitentiary, contrary to the Acts of the General Assembly made and provided for.

(Signed) W. J. McFarland, Deputy Warden.

Sworn and subscribed before me this 28th day of December, A. D. 1931. (Signed) Abram Houser, Justice of the Peace. My Commission expires first Monday Jan. 1934.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 9] Transcript.

Commonwealth of Pennsylvania

versus

Elmer Sullivan, Reg. No. B-1417 T. N. Elmer John Sullivan

Costs

Magistrate	$....
Information	50
Docket Entry	50
Warrant	50
Subpœna	....
Examination	75
Oaths	25
Recognizance of Defendant	....
" Pros. and Wit.	....
2 Commitments	1.00
Discharge	50
Continuance	....
Transcript and Cert.	75
	....
	$4.00

Costs—Continued

Constable	....
Sheriff Dunlap	2.00
Execution and Warrant	....
Mileage—Miles Circuit	....
On Com. Sub.	....
On Commitment	....
Transcript	....
	....
	$....

Warrant issued on the 28th day of December 1931, on oath of W. J. McFarland, Deputy Warden Defendant charged with breaking prison and breaking prison and escaping from the Western State Penitentiary of Pennsylvania, in the Township of Benner, County of Centre, and State of Pennsylvania, on the 28th day of December A. D. 1931.

December 30, 1931, Defendant arrested and taken to the Centre County jail, and then later brought before me for a hearing; wherefore defendant waived further hearing and admitted guilt as charged.

After hearing, defendant required to give bail in the sum of $—, conditioned for appearance at next term of Court.

Defendant —— ——, residing at ——, and —— ——, residing at ——.

Each held in the sum of $—, conditioned that the Defendant will appear at the next Court of Quarter Sessions of the Peace for —— County, and not depart said Court without leave.

The following persons are witnesses for the Commonwealth:

1	6 ....
2	7 ....
3	8 ....
4	9 ....
5	10 ....

* Each of whom are bound in the sum of — for their appearance respectively, at the next Court of Quarter Ses-

* Only used in cases of felony.

sions for the County of —— and give evidence on the part of the Commonwealth, and not depart said Court without leave.

I hereby certify that the above is a correct transcript from my docket. Witness my hand and seal this 31st day of December A. D. 1931.

(Signed) Abram Houser, Justice of the Peace. My Commission expires first Monday January 1934. (Seal.)

Clerk's certificate to foregoing paper omitted in printing.

[File endorsement omitted.]

[fol. 10] IN THE COURT OF QUARTER SESSIONS OF THE PEACE IN AND FOR THE COUNTY OF CENTRE

INDICTMENT—Filed December 31, 1931

COUNTY OF CENTRE, SS:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring in and for the county of Centre, upon their respective oaths and affirmations do present that one Elmer Sullivan, late of the County aforesaid, was for some time prior to the day of December 28, in the year of our Lord One Thousand Nine Hundred and thirty-one, lawfully committed and confined as a prisoner in the Western Penitentiary of Pennsylvania, and that on or about the 28th day of December, A. D. 1931, at the County aforesaid and within the jurisdiction of this Court, with force and arms, etc., the said Elmer Sullivan did wilfully, unlawfully and maliciously break out of the said Western Penitentiary of Pennsylvania, contrary to the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest Aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that the said Elmer Sullivan, late of the County aforesaid, was for sometime prior to the 28th day of December A. D. 1931, lawfully committed and confined as a prisoner in the said Western Penitentiary, and that on or about the 28th day of December, A. D. 1931, at the County

aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the said Elmer Sullivan did wilfully, unlawfully and maliciously escape from the said Western Penitentiary of Pennsylvania, contrary to the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grant Inquest Aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations, do further present that the said Elmer Sullivan, late of the County aforesaid, was for some time prior to the 28th day of December A. D. 1931, lawfully committed and confined as a prisoner in the Western Penitentiary of Pennsylvania, and that on or about the 28th day of December, A. D. 1931, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the said Elmer Sullivan did wilfully, unlawfully and maliciously break out of and escape from the said Western Penitentiary of Pennsylvania, contrary to the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

(Signed) John G. Love, District Attorney.

And now December 31, 1931 I hereby waive the finding of a true bill by the Grand Jury on the within indictment and enter a plea of guilty thereto, as if regularly tried and convicted as within indicted.

(Signed) Elmer Sullivan.

Clerk's certificate to foregoing paper omitted in printing.

[File endorsement omitted.]

[fol. 11] IN THE COURT OF QUARTER SESSIONS OF THE PEACE OF CENTRE COUNTY, PENNSYLVANIA

[Title omitted]

SENTENCE

And now, December 31st, 1931, the sentence of the Court is that you, Elmer Sullivan, pay the costs of prosecution, a fine of One Dollar ($1.00), and undergo imprisonment in

the Western Penitentiary of the State of Pennsylvania for a period of not less than three years nor more than six years, to be computed from the expiration of your original sentence from Erie County, and that you stand committed until such sentence is complied with.

By the Court.

(Signed) M. Ward Fleming, P. J.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 12] IN SUPREME COURT OF PENNSYLVANIA

EXCERPTS FROM PETITIONER'S BRIEF

2. Statistics and Certified Record of Lower Court

Copy

IN THE COURT OF QUARTER SESSIONS OF THE PEACE OF CENTRE COUNTY, PENNSYLVANIA, FEBRUARY SESSIONS, 1932

No. 99

COMMONWEALTH OF PENNSYLVANIA

vs.

CLARENCE McCANN, Reg. No. B-2151, T. N. Clarence Lloyd McCann

Attorney for Plaintiff: —— ——.
Attorney for Defendant: —— ——.

Information

STATE OF PENNSYLVANIA,
County of Centre:

Before me, the subscriber a Justice of the Peace in the aforesaid State and County, personally came W. J. McFarland, Deputy Warden, who being sworn according to law, says that Clarence McCann, Rg. No. B-2851 a prisoner confined in the Western State Penitentiary of Pennsylvania in the Township of Benner, County of Centre and State of [fol. 13] Pennsylvania, sentenced by the Court of Quarter Sessions of the Peace for Fayette County, sentenced on the

11th day of September A. D. 1931 to a term of imprisonment of not less than one year nor more than two years, and whose term of imprisonment had not yet expired, did on the 28th day of December A. D. 1931, in the Township of Benner, County of Centre, and State of Pennsylvania, break prison, and break prison and escape from the said Western State Penitentiary, contrary to the Acts of the General Assembly in such cases made and provided.

(Signed) W. J. McFarland, Deputy Warden.

Sworn and subscribed before me this 28th day of December A. D. 1931. (Signed) Abram Houser, Justice of the Peace. (Seal.)

Certified from the record as entered and filed in this office. In testimony whereof, I hereunto set my hand and cause the seal of the Court to be affixed this 13th day of October, A. D. 1936.

(Signed) Bond C. White, Clerk of the Court. (Seal.)

COMMONWEALTH OF PENNSYLVANIA

versus

CLARENCE McCANN, Reg. No. 2851, T. N. Clarence Lloyd McCann

[fol. 14]

Costs

Information	$.50
Docket Entry	.50
Warrant	.50
Examination	.75
Oaths	.20
Commitment	1.00
Discharge	.50
Transcript & certificate	.75
	4.70

Constable
Sheriff

Transcript

Warrant issued on the 28th day of December 1932, on oath of W. J. McFarland, Deputy Warden Defendant charged with Breaking Prison, breaking prison and escap-

ing from the Western State Penitentiary of Pennsylvania, on the 28th day of December A. D. 1931, in the Township of Benner, County of Centre and State of Pennsylvania.

December 30, defendant arrested and taken to the Centre County jail, and then brought before me for a hearing, wherefore defendant waived further hearing and admitted his guilt as charged.

Certified from the record as entered and filed in this office. In testimony whereof, I set my hand and cause the seal of the Court to be affixed this 12th day of October 1936.

(Signed) Bond C. White, Clerk. (Seal.)

[fol. 15] IN THE COURT OF QUARTER SESSIONS OF THE PEACE IN AND FOR THE COUNTY OF CENTRE, FEBRUARY SESSIONS, 1932

No. 99

COUNTY OF CENTRE, SS:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring in and for the County of Centre, upon their respective oaths and affirmations do present that one Clarence McCann, late of the County aforesaid, was for some time prior to the day — in the year of our Lord One thousand nine hundred and thirty-one, lawfully committed and confined as a prisoner in the Western Penitentiary of Pennsylvania, and that on or about the 28th day of December A. D. 1931, at the County aforesaid and within the jurisdiction of this Court, with force and arms, etc., the said Clarence McCann did wilfully, unlawfully and maliciously break out of the said Western Penitentiary of Pennsylvania, contrary to the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest Aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that the said Clarence McCann, late of the County aforesaid, was for some time prior to the 28th day [fol. 16] of December A. D. 1931, lawfully committed and confined as a prisoner in the said Western Penitentiary, and that on or about the 28th day of December A. D. 1931, at the County aforesaid, and within the jurisdiction of this Court with force and arms, etc., the said Clarence McCann did wilfully, unlawfully and maliciously escape from the

said Western Penitentiary of Pennsylvania, contrary to the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest Aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations, do further present that the said Clarence McCann, late of the County aforesaid, was for some time prior to the 28th day of December A. D. 1931, lawfully committed and confined as a prisoner in the Western Penitentiary of Pennsylvania, and that on or about the 28th day of December A. D. 1931, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the said Clarence McCann did wilfully, unlawfully and maliciously break out of and escape from the said Western Penitentiary of Pennsylvania, contrary to the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

(Signed) John G. Love, District Attorney.

[fol. 17] Certified from the record as entered and filed in this office. In testimony whereof, I hereunto set my hand and cause the seal of the Court to be affixed this 12th day of October, 1936.

(Signed) Bond C. White, Clerk. (Seal.)

IN THE COURT OF QUARTER SESSIONS OF THE PEACE OF CENTRE COUNTY, PENNSYLVANIA, FEBRUARY SESSIONS, 1932

No. 99

COMMONWEALTH

vs.

CLARENCE McCANN

Breaking and Escaping Pen. Pros. W. J. McFarland, Dep. Warden

Dec. 31, 1931. Defendant appears in open Court, waives finding of True Bill, enters plea of guilty on indictment filed.

Order of Sentence

And now, December 31, 1931, the sentence of the Court is that you, Clarence McCann, pay the costs of prosecution,

a fine of ($1.00) One Dollar, and undergo imprisonment in the Western Penitentiary of the State of Pennsylvania for a period of not less than one year nor more than two years, to be computed from the expiration of your original sentence from Fayette County, and that you stand committed until such sentence is complied with.

(Signed) By the Court, M. Ward Fleming, P. J.

[fol. 18] Jan. 2, 1932. Order of Sentence filed.

Jan. 5, 1932. Receipt from Western Penitentiary and Transportation bill of Sheriff filed.

Certified from the record as entered and filed in this office. In testimony whereof, I hereunto set my hand and cause the seal of the Court to be affixed this 13th day of October A. D. 1936.

(Signed) Bond C. White, Clerk of Court. (Seal.)

Report of Excerpts

On the resentencing of escaped prisoners from the Western State Penitentiary, Rockview Branch, as shown by the Quarter Sessions records in the Centre County Court at Bellefonte, Pennsylvania.

(Note) The sentence in full will be given under the first item, and thereafter the formal parts of the sentence will be omitted and only the length of the sentence and the place from which originally sentenced will be set forth.

Com.

vs.

Elmer Sullivan, Alias Elmer John Sullivan

100 February SS., 1932

Filed 12-31-31 B. & E. West Pen. Pros. McFarland, D. W. Ret. of J. P. filed. Committed.

12-31-31, defendant appears and waiving finding of true bill enters a plea of guilty on indictment filed.

[fol. 19] And now, 12-31-1931, the sentence—3 to 6 years on expiration of Erie County sentence.

1-2-32 order of sentence field.

1-5-32 rcpt. from West Pen. filed.

COM.

VS.

JOHN DESIMONE, Alias JOE TARVAIN

27 Nov. SS., 1932

Filed 9-26-32. B. & E. Pen. Pros. McFarland, D. W. Ret. of J. P. filed. Committed.

11-1-32 a true bill Josephine K. Dyer, Foreman.

11-16-32 defendant appears in open court and enters a plea of Not Guilty on indictment found, jury ordered, called and came 12 good and lawful citizens of Centre County who find the defendant guilty.

And now, 11-16-32 the sentence—3½ to 7 years on expiration of Erie County sentence.

10-18-32 order of sentence filed.

COM.

VS.

JACK W. LAWSON

94 Nov. SS., 1934

Filed 10-28-32. B. & E. Pen. Pros. McFarland, D. W. Not apprehended.

11-1-32 a true bill, Josephine K. Dyer, Foreman.

[fol. 20] 9-1-33 df. appears in open court and enters plea of guilty on indictment filed.

And now, 9-1-33 the sentence—5 to 10 years on expiration of Erie County Sentence.

9-5-33 order of sentence filed.

9-19-33 rcpt. fr. West. Pen. filed.

COM.

VS.

EDWARD WATSON

42 May SS., 1933

Filed 3-29-33. B. & E. Pen. Pros. McFarland, D. W. Ret. of J. P. filed. Committed.

5-3-33 a true bill, Morton Abelson, Foreman.

5-17-33 df. appears in open court and enters plea of guilty on indictment filed.

And now, 5-17-33, the sentence—4 years 7 months to 10 years on expiration of Erie County sentence.

5-22-33 order of sentence filed.

6-2-33 rcpt. fr. W. Pen. filed.

COM.

vs.

WALTER SCOTT

80 Sept. SS., 1933

Filed 7-12-33. B. & E. Pen. Pros. McFarland, D. W. Ret. of J. P. filed.

8-29-33 a true bill, W. G. Saxion, Foreman.

[fol. 21] 9-30-33 df. appears in open court and enters plea of guilty on indictment filed.

And now, 9-30-33, the sentence—6 to 12 years on expiration of Erie County sentence.

10-2-33 order of sentence filed.

10-4-33 rcpt. fr. W. Pen. filed.

COM.

vs.

RAY WHITE

20 Nov. SS., 1933

Filed 9-21-33. B. & E. Pen. Pros. McFarland, D. W. Ret. of J. P. filed Committed.

And now, 10-31-33 a true bill, N. I. Wilson, foreman.

11-13-33 df. appears and enters plea of not guilty, cause reached, &c., and find the df. guilty.

And now, 11-13-33, the sentence—3½ to 7 years on expiration of Erie Co. sentence.

11-15-33 order of sentence filed.

12-5-33 rcpt. fr. W. Pen. filed.

COM.

vs.

JOHN WESOLASKI

141 Sept. SS., 1934

Filed 8-17-34. B. & E. Pen. Pros. Rhoads, D. W. Ret. of J. P. filed.

8-29-34 a true bill, Chas. T. Sellers, Foreman.

[fol. 22] 8-5-35 df. appears in open court and enters a plea of guilty on indictment found.

And now, 8-5-35, the sentence—3 to 6 years on expiration of Erie County sentence.

8-5-35 order of sentence filed.

8-19-35 rcpt. fr. W. Pen. filed.

COMMONWEALTH OF PENNSYLVANIA,
County of Centre, ss:

Personally appeared M. W. Gettig, who being duly sworn according to law doth depose and say that he has made examination of the Quarter Sessions records of the Courts of Centre County for the past five years relative to the resentencing of escaped prisoners from the Western Penitentiary Rockview Branch, and that the record of which this is a part, is true and correct to the best of his knowledge and belief.

(Signed) M. W. Gettig.

Sworn to and subscribed before me this 27th day of October, A. D. 1936. (Signed) Bond C. White, Prothonotary. My commission expires First Monday in Jan. 1940. (Seal.)

STATE OF PENNSYLVANIA,
County of Erie, ss:

Before me, the subscriber, a Notary Public, in and for said State and County, personally appeared William W. [fol. 23] Knox, Attorney at Law, who being duly sworn according to law, deposes and says that he personally examined the records in the office of the Clerk of Courts of Erie County, Pennsylvania, and learned therefrom the duration of sentences imposed upon all persons sentenced by the Erie County Courts of Quarter Sessions and Oyer and Terminer, who later escaped from the prison farm at Rockview within the last five years; that he thereupon caused to be made an examination of the records in the office of the Clerk of Courts of Centre County by M. W. Gettig, a member of the bar residing in said county, and obtained from him an affidavit setting forth the sentences imposed on all convicts from Erie County escaping from said prison farm and sentenced during the last five years; and that in

every such case, the sentence imposed by the Centre County Court of Quarter Sessions was the same as the original sentence imposed by the Erie County Courts to be computed from the expiration of the original sentences.

(Signed) William W. Knox.

Sworn to and subscribed before me this 29 day of October, A. D. 1936. (Signed) Robt. J. Firman, Notary Public. My commission expires May 11, 1940. (Seal.)

[fol. 24] Excerpts Made by William W. Knox, Esq.

ERIE COUNTY COURT

COMMONWEALTH

VS.

JOHN DE SIMONE, Alias JOE TAVANI

Quarter Sessions Court

14 Sept. Sessions, 1929

Charge:

1. Breaking and entering a garage;
2. Larceny;
3. Receiving stolen goods.

October 1, 1929. Defendant pleads guilty on 1st and 2nd counts.

October 1, 1929. Court sentenced defendant * * * undergo an imprisonment in the Western Penitentiary * * * for an indefinite term, the minimum of which shall be 3 years and 6 months, and the maximum 7 years * * *

Per Curiam, H.

COMMONWEALTH

VS.

JACK W. LAWSON

Quarter Sessions Court

No. 140 Feb. Sessions, 1927

[fol. 25] Charge:

Breaking and entering a store building.

February 7, 1927. Defendant pleads guilty.

February 7, 1927. Court sentenced defendant to * * * undergo an imprisonment in the Western Penitentiary * * * for an indefinite term, the minimum of which shall be 5 years and the maximum 10 years * * *

COMMONWEALTH

VS.

EDWARD WILSON, Alias ED. CONLEY et al.

Quarter Sessions Court

No. 102 Sept. Sessions, 1931

Charge:

Attempting to breaking and entering a warehouse.

September 8, 1931. A true bill.

September 14, 1931. Defendants plead not guilty, same day jury called.

September 15, 1931. Jury say they find defendants guilty as charged.

September 18, 1931. Court sentenced the defendant Edward Watson, alias Ed. Conley, to * * * undergo an imprisonment in the Western Penitentiary * * * for an indefinite term, the minimum of which shall be 4 years and 7 calendar months, and the maximum 10 years.

[fol. 26] COMMONWEALTH

VS.

WALTER SCOTT

Oyer and Terminer Court

No. 1 February Sessions, 1931

February 2, 1931. A true bill.

February 17, 1931. Certified to Oyer and Terminer Court.

February 17, 1931. Prisoner pleads not guilty—jury impanelled.

February 20, 1931. Jury say they find the defendant guilty of voluntary manslaughter.

February 24, 1931. Rule for new trial granted.

February 27, 1931. Testimony filed.

February 28, 1931. Rule discharged.

February 28, 1931. Court sentenced the defendant, Walter Scott to * * * undergo an imprisonment in the Western Penitentiary * * * for an indefinite term the minimum of which shall be 6 years and the maximum 12 years.

COMMONWEALTH

VS.

RAY WHITE

Quarter Sessions Court

No. 84 February Sessions, 1929

Charge:

1. Larceny of Automobile.
2. Receiving stolen goods.

[fol. 27] February 4, 1929. Defendant pleads guilty to 1st count.

February 4, 1929. Court sentenced the defendant, Ray White, to * * * undergo an imprisonment in the Western Penitentiary * * * for an indefinite term, the minimum of which shall be 3 years and 6 calendar months and the maximum seven years.

COMMONWEALTH

vs.

JOHN WESOLOSKI

Quarter Sessions Court

No. 66 February Sessions, 1934

Charge:

1. Breaking and entering a place of business;
2. Larceny;
3. Receiving stolen goods.

March 20, 1934. Defendant pleads guilty on 1st & 2nd counts.

May 20, 1934. Court sentenced defendant, John Wesoloski, to * * * undergo an imprisonment in the Western Penitentiary * * * for an indefinite term, the minimum of which shall be 3 years and the maximum 6 years * * *

COMMONWEALTH

vs.

ELMER SULLIVAN et al.

[fol. 28] Quarter Sessions Court

No. 25 May Sessions, 1929

Charge:

1st. Breaking and entering a store building with intent to commit a felony therein.

2nd. Larceny.

3rd. Receiving stolen goods.

April 26, 1929. Defendant pleads guilty to 1st & 2nd counts.

April 26, 1929. Court sentenced defendant, Elmer Sullivan, to * * * undergo an imprisonment in the Western Penitentiary * * * for an indefinite term, the minimum of which shall be 3 years, and the maximum 6 years * * *

[fol. 32a] CERTIFICATE OF RECORD

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

I, Pier Dannals, Prothonotary of the Supreme Court of Pennsylvania, for the Western District thereof, do hereby certify that the foregoing record, pages 15a to 31a, both inclusive, is a true and faithful copy of a part of the brief in behalf of the petitioner for writ of habeas corpus, filed in the Supreme Court of Pennsylvania, in the Western District aforesaid, in a certain suit therein pending, wherein Commonwealth ex relationé Elmer Sullivan is plaintiff and Stanley Ashe, Warden, State Penitentiary, Western District of Pennsylvania, is defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of the said the Supreme Court of Pennsylvania, in and for the Western District, at Pittsburgh, this 8th day of April, in the year of our Lord one thousand nine hundred and thirty-seven.

Pier Dannals, Prothonotary. (Seal of the Supreme Court of Pennsylvania, Western District.)

[fol. 33a] IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

DOCKET ENTRIES

No. 908. Miscellaneous Docket

COMMONWEALTH, ex rel., ELMER SULLIVAN,

vs.

STANLEY ASHE, Warden, State Penitentiary, Western District of Pennsylvania

Attorney for Petitioner: Bernard T. Foley.
Attorney for Commonwealth: Adrian Bonnelly, Dep. Atty. General.
Sept. 21, 1936—Petition for writ of habeas corpus filed.

Order

September 21, 1936—Rule to show cause granted, returnable forthwith. The oral argument of the case is ordered

for the week of October 5, 1936, at Pittsburgh. The case to be placed at the foot of the list.

Per Curiam.

Sept. 22/36—Rule exit.

Oct. 2/36—Acceptance of service of rule dated October 1, 1936, filed.

October 7, 1936—Stipulation by counsel for continuance to November Session filed.

Order

And now, to wit, this 7th day of October, A. D. 1936, in accordance with the provisions of the stipulation in the above entitled matter, a continuance is hereby granted to the November Sessions.

Per Curiam.

October 7, 1936—Transferred to Philadelphia.

Nov. 23, 1936—Argued.

Decision

Jan. 11, 1937—The rule is discharged.

Stern, J.

[fol. 34a] In the Supreme Court of Pennsylvania, Western District

No. 908. Miscellaneous Docket

Petition for Writ of Habeas Corpus

Commonwealth, ex rel., Elmer Sullivan,

v.

Stanley Ashe, Warden, State Penitentiary, Western District of Pennsylvania

Opinion of the Court—Filed Jan. 11, 1937

Stern, J:

This is a petition for a writ of habeas corpus on which the court, exercising its original jurisdiction, has granted a rule to show cause. The petitioner, Elmer Sullivan, in 1929 pleaded guilty to breaking and entering with intent

to commit a felony, and was sentenced to the Western Penitentiary for a term of from three to six years. He was transferred to Rockview, from where he escaped in 1931. Being apprehended, he was indicted for breaking out of prison, pleaded guilty, and was sentenced to the penitentiary under the Act of March 31, 1860, P. L. 382, section 3, for a term of from three to six years, to be computed from the expiration of his original sentence.

The present writ is based upon the alleged unconstitutionality of the statute under which the sentence was imposed. The act provides, inter alia, that a prisoner breaking penitentiary or jail is guilty of a misdemeanor and upon conviction shall be sentenced to undergo an imprisonment to commence from the expiration of, and for a period of time not exceeding, the original sentence by virtue of which he had been imprisoned. The criticism leveled at the act is that for the offence of breaking prison unequal sentences are thus provided, depending upon what, it is contended, is the merely adventitious circumstance of the duration of [fol. 35a] a former sentence of the offender. It is claimed that this is a denial of the equal protection of the laws, and therefore a violation of section 1 of the fourteenth amendment of the Constitution of the United States. It is pointed out that in this very case the petitioner, Sullivan, made his escape from Rockview simultaneously with a fellow prisoner, Clarence McCann. The two were apprehended at the same time and sentenced on the same day, but McCann received a sentence of only one to two years because that was the extent of his original sentence.

The constitutional provision here invoked has been the subject of such a wealth of interpretation by the Federal Supreme Court that, at least as far as general underlying principles are concerned, there can be no room for misconception. The fourteenth amendment does not impose such a technical and legalistic uniformity upon all persons and human transactions as to preclude wise differentiations. Classifications are permissible when founded upon reason and logic; they are prohibited only when arbitrary and capricious. As was said by the present Chief Justice of the Supreme Court of the United States in Graham v. State of West Virginia, 224 U. S. 616, 630, quoting from an earlier case: "The Fourteenth Amendment is not to be considered 'as introducing a factitious equality without regard to prac-

tical differences that are best met by corresponding differences of treatment.' ''

The real question is whether a statute adopts an unreasonable classification when, in providing for the sentencing of persons who commit identical crimes, it authorizes the imposition of a severer sentence upon one who had previously offended more grievously than another. The answer would seem to be obvious. Probably every day, in every criminal court in the country, judges impose unequal sentences upon defendants who have committed the same offence but where their former records of crime are different. [fol. 36a] If judges are properly permitted to exercise such discretion, certainly the legislature by a general statute can enact into law the expression of a similar policy.

The classification effected by the act here under attack is justified. The longer the sentence which is being served by a prisoner the greater his temptation to seek to escape, and the greater therefore the penalty which must be imposed in order to act as an effective deterrent. Furthermore, the breaking from prison of one who is serving a long sentence, and therefore presumably has been guilty of a serious crime, involves a greater potential danger to society than the escape of a petty offender. Against a greater menace society is warranted in seeking a larger measure of protection.

The time has long passed in the development of penology when it was considered that a given punishment should automatically attach to a given crime. Penology is not, and probably never can become, an exact science. Sentencing criminals is a sociological problem, and as such demands a wide range of adaptation to social needs in the treatment of individual cases.

The most reliable guide to a judicial solution of the legal problem here presented is that offered by the decisions of the courts sustaining habitual criminal acts. In Graham v. State of West Virginia, 224 U. S. 616, 623, upholding such a statute, the Supreme Court of the United States said: "The propriety of inflicting severer punishment upon old offenders has long been recognized in this country and in England. They are not punished the second time for the earlier offense, but the repetition of criminal conduct aggravates their guilt and justifies heavier penalties when they are again convicted. Statutes providing for such increased pun-

ishment were enacted in Virginia and New York as early as 1796, and in Massachusetts in 1804; and there have been [fol. 37a] numerous acts of similar import in many States. This legislation has uniformly been sustained in the state courts, * * * and it has been held by this court not to be repugnant to the Federal Constitution." It was also said (p. 630) that "The fact of such [prior] sentence, indicating the gravity of the offense, affords a reasonable basis for classification."

In Moore v. Missouri, 159 U. S. 673, such a statute was attacked on the ground that it prescribed different punishment for different persons for committing the same offense. The Supreme Court pointed out that the punishment for the later offense was rendered more severe only in consequence of the defendant's previous conduct. The court said (p. 677): "Nor can we perceive that plaintiff in error was denied the equal protection of the laws, for every other person in like case with him, convicted as he had been, would be subjected to the like punishment. The Fourteenth Amendment means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.' Missouri v. Lewis, 101 U. S. 22. The general doctrine is that that amendment, in respect of the administration of criminal justice, requires that no different degree or higher punishment shall be imposed on one than is imposed on all for like offenses; but it was not designed to interfere with the power of the State to protect the lives, liberty, or property of its citizens, nor with the exercise of that power in the adjudication of the courts of the State in administering the process provided by the law of the State. In re Converse, 137 U. S. 624. And the State may undoubtedly provide that persons who have been before convicted of crime may suffer severer punishment for subsequent offenses than for a first offense against the law, and that a different punishment for the same offense may be inflicted under particular circumstances, provided it is dealt out to all alike who are similarly situated. Pace v. Ala- [fol. 38a] bama, 106 U. S. 583; Leeper v. Texas, 139 U. S. 462."

An habitual criminal statute of Massachusetts was held constitutional in McDonald v. Massachusetts, 180 U. S. 311, of Wisconsin in Ingalls v. State of Wisconsin, 48 Wis. 647,

4 N. W. 785; of New York in People v. Sickles, 156 N. Y. 541, and of California in People v. Coleman, 145 Cal. 609, 79 Pac. 283. In the last named case it was said: "Penal laws are not so much for the punishment of the offender as for the protection of society, and experience has shown that the persistent and hardened offender is more dangerous to society than a person who has committed but one offense, and that a severer punishment is demanded in such case, the better to protect society."

Even where there are several participants in the commission of a single crime, it is not uncommon for a judge to impose unequal sentences based upon variations in age, sex, health, likelihood of reform, different degrees of initiative in the perpetration of the offense, and similar conditions.

In the present case the same crime, that of breaking prison, was committed by both Sullivan and McCann, but at the time Sullivan was serving a three to six year sentence whereas McCann was serving from one to two years; from this it must be presumed that Sullivan had committed either a graver crime than McCann or a similar offense under circumstances of greater culpability. The law was justified, therefore, when imposing sentence for the second crime, in treating Sullivan's offense more severely than that of McCann.

We hold that the Act of March 31, 1860, P. L. 382, section 3, does not deny the equal protection of the laws within the meaning of the fourteenth amendment. We cannot approve the conclusions to the contrary reached in State v. Lewin, 53 Kans. 679, 37 Pac. 168; In re Mallon, 16 Idaho 737, 102 Pac. 374, and State v. Johnsey, 46 Okla. Criminal Appeals 233, 287 Pac. 729.

[fol. 39a] Petitioner contends that inadvertently or ignorantly he pleaded guilty to the charge of breaking prison when really guilty of nothing more than an escape, which, he argues, is a lesser crime. Whatever the fact in that regard may be, redress does not lie within the scope of a habeas corpus; such a writ cannot be made the substitute for an appeal: Commonwealth v. Reifsteck, 271 Pa. 441, Halderman's Petition, 276 Pa. 1; Commonwealth v. Curry, 285 Pa. 289.

The rule is discharged.

[fol. 40a] CERTIFICATE OF RECORD

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

I, Pier Dannals, Prothonotary of the Supreme Court of Pennsylvania, for the Western District thereof, do hereby certify that the foregoing record, pages 1 to 18, inclusive, is a true and faithful copy of the record and proceedings of the Supreme Court of Pennsylvania, in the Western District afor-said, in a certain suit therein pending, wherein Commonwealth, ex rel. Elmer Sullivan, is plaintiff and Stanley Ashe, Warden, Western Penitentiary is defendant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said the Supreme Court of Pennsylvania, in and for the Western District, at Pittsburgh, this thirty-first day of March, in the year of our Lord one thousand nine hundred and thirty-seven.

Pier Dannals, Prothonotary. (Seal of the Supreme Court of Pennsylvania, Western District.)

[fol. 41a] Endorsed on cover: In the Supreme Court of the State of Pennsylvania, Western District. No. 908, Miscellaneous Docket. Commonwealth, ex rel. Elmer Sullivan, vs. Stanley Ashe, Warden, State Penitentiary, Western District of Pennsylvania.

[fol. 39] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 17, 1937

The petition herein for a writ of certiorari to the Supreme Court of the State of Pennsylvania is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 41,418. Pennsylvania Supreme Court. Term No. 25. Commonwealth of Pennsylvania, ex rel. Elmer Sullivan, petitioner, vs. Stanley Ashe, Warden State Penitentiary, Western District of Pennsylvania. Petition for a writ of certiorari and exhibit thereto. Filed April 9, 1937. Term No. 25, O. T., 1937.